

1 WILLIAM TAMAYO, REGIONAL ATTORNEY  
2 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
3 SAN FRANCISCO DISTRICT OFFICE  
4 450 GOLDEN GATE AVENUE, POB 36025  
5 SAN FRANCISCO, CA 94102

6 JOHN F. STANLEY, SUPERVISORY TRIAL ATTORNEY  
7 DAMIEN LEE, SENIOR TRIAL ATTORNEY  
8 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
9 909 FIRST AVENUE, SUITE 400  
10 SEATTLE, WA 98104  
11 TEL: (206) 220-6915  
12 FACSIMILE: (206) 220-6911  
13 Damien.Lee@eeoc.gov

14 ATTORNEYS FOR PLAINTIFF

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff

v.

BNSF RAILWAY CO.,

Defendant.

CIVIL ACTION NO.

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

1 This is an action under Title I of the Americans with Disabilities Act, as amended by the  
 2 ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, (“ADA” and “ADAAA”) to correct  
 3 unlawful employment practices on the basis of disability and to provide appropriate relief to  
 4 Russell Holt, who was adversely affected by such practices. The Equal Employment  
 5 Opportunity Commission alleges that BNSF Railway Co. (“Defendant” or “BNSF”)  
 6 discriminated against Mr. Holt, a qualified individual with a disability, when it failed to hire Mr.  
 7 Holt for a senior patrol officer position because of his record of disability or because Defendant  
 8 regarded him as being disabled.

### 9 JURISDICTION AND VENUE

10 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,  
 11 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the  
 12 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporate by  
 13 reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §  
 14 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991,  
 15 42 U.S.C. § 1981a.

16 2. The employment practices alleged to be unlawful were committed within the  
 17 jurisdiction of the United States District Court for the Western District of Washington.

### 18 PARTIES

19 3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is  
 20 the agency of the United States of America charged with the administration, interpretation and  
 21 enforcement of Title I of the ADA and is expressly authorized to bring this action by Section  
 22 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1)  
 23 and (3) of Title VII, 42 U.S.C. 2000e-5(f)(1).  
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1           4.       At all relevant times, Defendant has continuously been doing business in the State  
2 of Washington and has continuously had at least 15 employees.

3           5.       At all relevant times, Defendant has continuously been an employer engaged in an  
4 industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and  
5 Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections  
6 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

7           6.       At all relevant times, Defendant has been a covered entity under Section 101(2) of  
8 the ADA, 42 U.S.C. § 12111(2).

9                               STATEMENT OF CLAIMS

10          7.       More than thirty (30) days prior to the institution of this lawsuit, Charging Party  
11 Russell Holt (“Mr. Holt”) filed a charge with the EEOC alleging violations of Title I of the ADA  
12 by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

13          8.       Since at least October 2011, Defendant has engaged in unlawful employment  
14 practices at its Seattle, Washington facility, in violation of Sections 102(a) and 102(b)(6) of Title  
15 I of the ADA, 42 U.S.C. §§ 12112(a) and 12112(b)(6). The Defendant discriminated against  
16 Russell Holt when it failed to hire him for a senior patrol officer position (“SPO position” or  
17 “subject position”) located in Seattle, Washington because of his disability, in violation of  
18 Sections 102(a) and 102(b)(6) of the ADA. Mr. Holt is qualified for the SPO position because  
19 he had previously been in law enforcement for eleven years and had performed all of the  
20 essential functions of similar jobs successfully and without any accommodation.

21          9.       Mr. Holt is an individual with a record of a disability. He was diagnosed in 2007  
22 as having a bulging lumbar disc with a disc extrusion. This permanent musculoskeletal injury  
23 substantially limited several of his major life activities for the remainder of 2007 including  
24 running and walking. Despite receiving regular medical treatment in 2007 for his permanent  
25 physical impairment, Mr. Holt did not miss any work from his law enforcement job in 2007  
because of his back injury. Mr. Holt received follow up treatment for his permanent physical

1 impairment in 2009, but did not miss any work from his law enforcement job in 2009. In fact,  
2 Mr. Holt qualified for a more physically arduous SWAT/emergency response team with his  
3 employer from 2009 to 2011. Mr. Holt applied for a senior patrol officer position with BNSF in  
4 Seattle, Washington in June 2011, was interviewed by BNSF's Security Chief in September  
5 2011, and received a conditional offer. Mr. Holt disclosed his permanent musculoskeletal back  
6 injury to BNSF after receiving the conditional offer for the subject position. After examining  
7 him in person and despite knowing about his prior back injury, a BNSF contract doctor  
8 medically approved Mr. Holt to start in the senior patrol officer position in October 2011. Even  
9 though BNSF's contract doctor had approved Mr. Holt to start in the subject position, BNSF's  
10 medical unit in Texas requested more information from him in November 2011, including an  
11 MRI. Mr. Holt informed BNSF in November 2011 that his back had been asymptomatic since  
12 2009, his own treating doctor would not approve a new MRI because it was medically  
13 unnecessary, and that he would therefore have to bear the cost of this MRI himself. BNSF's  
14 medical unit refused to waive the requirement that he provide an MRI at his own cost, and  
15 indicated that there was still no guarantee that he would be approved to start in the subject  
16 position even if he provided an MRI at his own cost, and that he would have to submit the MRI  
17 in a short period of time or their offer would be rescinded. BNSF then rescinded its conditional  
18 offer to Mr. Holt on December 14, 2011. Defendant made the decision not to hire Mr. Holt on  
19 the basis of his disability.

20 10. In addition, Defendant regarded Mr. Holt as having a disability in that Defendant  
21 failed to hire him because of his permanent musculoskeletal impairment, a bulging lumbar disc  
22 with at least one extrusion.

23 11. The effect of the practices complained of in paragraph 8-10 above has been to  
24 deprive Mr. Holt of equal employment opportunities and otherwise adversely affect his status as  
25 an employee.

12. The unlawful employment practices complained of in paragraph 8-10 above were and are intentional.

13. The unlawful employment practices complained of in paragraphs 8 - 10 above were done with malice or with reckless indifference to the federally protected rights of Russell Holt.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, successors, assigns, and all persons in active concert or participation with it, from unlawfully failing to provide equal employment opportunities to applicants for employment and employees with disabilities and to accommodate applicants' and employees' disabilities, and any other employment practice which discriminates on the basis of disability.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Mr. Holt by providing appropriate back pay and front pay with interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant to make whole Mr. Holt by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 8-10 above, including past and future out-of-pocket losses, in amounts to be determined at trial.

E. Order Defendant to make whole Mr. Holt by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 8-10 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay Mr. Holt punitive damages for its malicious and reckless conduct, as described in paragraphs 8-10 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this 26th day of September, 2014.

WILLIAM R. TAMAYO  
Regional Attorney

P. DAVID LOPEZ  
General Counsel

JOHN F. STANLEY  
Supervisory Trial Attorney

JAMES L. LEE  
Deputy General Counsel

DAMIEN A. LEE  
Senior Trial Attorney

GWENDOLYN Y. REAMS  
Associate General Counsel

BY: /s/William R. Tamayo  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
909 First Avenue, Suite 400  
Seattle, WA 98104-1061  
Telephone (206) 220-6915  
Facsimile (206) 220-6911

Office of the General Counsel  
131 M Street, N.E.  
Washington, D.C. 20507

Attorneys for Plaintiff